

NOV 22 2010

JULIA C. DUDLEY, CLERK
BY: 
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA) Criminal No. 7:05CR00040-1
)
v.) **2255 FINAL ORDER**
)
ERNEST FREDERICK HODGES) By: Samuel G. Wilson
) United States District Judge

In accordance with the accompanying Memorandum Opinion, it is hereby

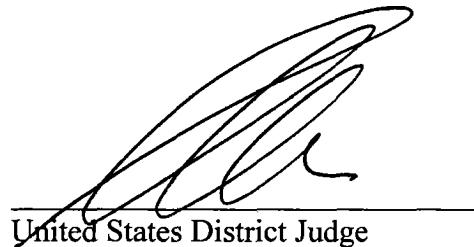
ADJUDGED AND ORDERED

that Hodges' motion (Docket No. 128) is construed as a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255, and the Clerk is **DIRECTED** to docket it as such; this § 2255 action shall be and hereby is **DISMISSED without prejudice** and this case is **STRICKEN** from the active docket of the court.

Further, finding that Hodges has failed to make the requisite substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(1), a certificate of appealability is **DENIED**.

The Clerk is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to petitioner.

ENTER: This 22 day of November, 2010.



United States District Judge